

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HOPE WILSON LAVACHIA

(Case No. 11943)

A hearing was held after due notice on April 17, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement, the minimum road frontage requirement, and from the minimum lot size requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.7 feet from the five (5) feet rear yard setback requirement for an existing shed on proposed Parcel B, a variance of 60.98 feet from the one hundred and fifty (150) feet road frontage requirement on proposed Parcel A, a variance of 60.98 feet from the one hundred and fifty (150) feet road frontage requirement on proposed Parcel B, a variance of 60.98 feet from the one hundred and fifty (150) feet road frontage requirement on proposed Parcel C, a variance of 1,322 square feet from the 20,000 square feet minimum lot size requirement on proposed Parcel A, a variance of 1,140 square feet from the 20,000 square feet minimum lot size requirement on proposed Parcel B, and a variance of 1,325 square feet from the 20,000 square feet minimum lot size requirement on proposed Parcel C. This application pertains to certain real property located on the northwest side of Country Club Road (Road 273) approximately 1,027 feet southwest of Windsor Road (911 Address: 513 & 511 Country Club Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.00-8.00 & 8.01.

1. The Applicant proposes to subdivide 2 existing parcels (Parcels 8.00 and 8.01) into 3 parcels. For purposes of clarity, the proposed parcel on the south side will be identified as Parcel A, the proposed parcel in the middle will be identified as Parcel B, and the proposed parcel on the north side will be identified as Parcel C.
2. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a survey of the Property dated February 13, 2017.
3. The Board found that the Office of Planning & Zoning received no correspondence in support of the Application and one (1) letter in opposition to the Application.
4. The Board found that Hope Lavachia was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review including a deed dated October 5, 2016, excerpts of property record cards, copies of findings of facts from previous Board of Adjustment decisions, and pictures of the Property.
5. The Board found that Mrs. Burton stated that the Applicant owns Parcels 8.00 and 8.01 and proposes to create three lots out of these two parcels.
6. The Board found that Mrs. Burton stated that Parcel 8.00 is improved by two existing dwellings. One dwelling is a one-story dwelling that was constructed in approximately 1940. The other dwelling is a two-story dwelling constructed in approximately 1935.
7. The Board found that Mrs. Burton stated that Parcel 8.00 was subdivided in 1995 to create Parcel 8.01.
8. The Board found that Mrs. Burton stated that Parcel 8.01 is an existing nonconforming lot with an entrance and a sewer connection. Parcel 8.01 only has road frontage of 60 feet.

9. The Board found that Mrs. Burton stated that the Applicant proposes to increase the lot width of Parcel 8.01 to 89.02 feet and the Applicant proposes to create two lots out of Parcel 8.00 with one dwelling on each lot. The newly created lots from Parcel 8.00 would be 89.02 feet wide as well.
10. The Board found that Mrs. Burton stated that the Applicant proposes this lot line adjustment and subdivision will create three similarly sized lots.
11. The Board found that Mrs. Burton stated that the parcels are unique.
12. The Board found that Mrs. Burton stated that the parcels are the remaining lands of the Applicant's family farm.
13. The Board found that Mrs. Burton stated that Parcel 8.00 does not have the necessary 300 feet of road frontage to be subdivided.
14. The Board found that Mrs. Burton stated that Parcel 8.00 was developed prior to 1970.
15. The Board found that Mrs. Burton stated that Parcel 8.01 is unique because it is an existing nonconforming lot.
16. The Board found that Mrs. Burton stated that there are two dwellings on one parcel and Parcel 8.01 is an existing nonconforming lot.
17. The Board found that Mrs. Burton stated that the proposed subdivision will reduce the nonconformities for both parcels.
18. The Board found that Mrs. Burton stated that the exceptional practical difficulty is due to the uniqueness of the parcels.
19. The Board found that Mrs. Burton stated that the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
20. The Board found that Mrs. Burton stated that the variances are necessary to enable reasonable use of the Property.
21. The Board found that Mrs. Burton stated that the exceptional practical difficulty has not been created by the Applicant.
22. The Board found that Mrs. Burton stated that the Applicant inherited the Property in its current state and the Applicant did not develop the Property or construct the improvements thereon.
23. The Board found that Mrs. Burton stated that the Applicant intends to retain one of the parcels and to gift the other two parcels to her daughters.
24. The Board found that Mrs. Burton stated that the variances will not alter the essential character of the neighborhood nor impair the uses or development of neighboring properties and the variances will not be detrimental to the public welfare.
25. The Board found that Mrs. Burton stated that there are three existing asphalt entrances thereby giving the appearance that there are three separate lots.
26. The Board found that Mrs. Burton stated that the Applicant received no complaints about the location of the shed and dwellings.
27. The Board found that Mrs. Burton stated that many lots along Country Club Road do not comply with lot width requirement.
28. The Board found that Mrs. Burton stated that the variances requested represent the minimum variances necessary to afford relief.
29. The Board found that Ms. Lavachia testified that the parcels are the last remaining parcels from her family's farm and she grew up on the Property. Her daughters will be the fifth generation to live on the Property.
30. The Board found that Ms. Lavachia testified that Silver View Farm Manufactured Home Park was developed out of the previous 42-acre farm. Silver View was sold and Parcels 8.00 and 8.01 were the remaining lands of the farm.
31. The Board found that Ms. Lavachia testified that Parcel 8.01 was deeded to her parents when the Park was sold.
32. The Board found that Ms. Lavachia testified that neighboring lots along Country Club Road are 60 to 70 feet wide.

33. The Board found that Ms. Lavachia testified that the shed is a cement block shed used for lawn equipment and is in good repair. The shed was built around 40 years ago.
34. The Board found that Ms. Lavachia testified that her parents recently passed away and no one has been living in the home on Parcel B since they passed away.
35. The Board found that Ms. Lavachia testified that the home on Parcel C used to be located across the street and was moved at the time the Rehoboth Beach Country Club was created. She has not decided whether to keep or destroy the home on Parcel C.
36. The Board found that Ms. Lavachia testified that she spoke with some of her neighbors and they do not oppose the Application.
37. The Board found that Ms. Lavachia, under oath, affirmed the statements made by Mrs. Burton.
38. The Board found that Kathleen Heintz was sworn in to testify in opposition to the Application. Ms. Heintz lives across the street from the Property.
39. The Board found that Ms. Heintz testified that she does not believe that the Applicant is seeking the minimum variances necessary to afford relief and that there is no need for the creation of 3 lots when the original 2 lots would not conform.
40. The Board found that no parties appeared in support of the Application.
41. The Board found that one (1) party appeared in opposition to the Application.
42. The case was tabled until May 1, 2017, at which time the Board discussed and voted on the Application.
43. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique in size, shape, and development. Currently, there are 2 separate lots with one lot (Parcel 8.01) that is unusually small and narrow and the other lot (Parcel 8.00) which has two homes thereon. These lots were developed years ago by a prior owner and are existing non-conforming lots. Further adding to this unusual situation is that there are three separate entrances to the lots and the Property appears to already be subdivided into 3 lots. Rather than maintain the status quo with an unusually small parcel and 2 houses on one lot, the Applicant proposes a reasonable subdivision which would result in three lots of almost identical size and width. The resulting subdivision would adjust the lot lines so that the existing homes would be located on separate lots and meet setback requirements. The resulting lots are similar in size to (and, in some cases, larger than) other lots along Country Club Road. Unfortunately, the Property (Parcel 8.00 and 8.00 combined) is too small and narrow to meet the lot width and square footage requirements. The existing development of Parcel 8.00 with two houses further complicates any potential subdivision of the Property. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicant who seeks to subdivide the lot. The situation is also unique because the existing dwellings and shed on the Property were placed on Parcel 8.00 by a previous owner prior to the enactment of the Sussex County Zoning Code.
 - b. Due to the Property's unique conditions, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicant seeks to subdivide the Property into three lots of similar size and width but is unable to do so without violating the Sussex County Zoning Code due to the narrowness and small size of the Property. The Board is convinced that the proposed subdivision of the Property is reasonable and that the

variances requested are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to reasonably subdivide the Property. The survey attached to the Application confirms that the subdivision is reasonable. The Board notes that the location of the existing dwelling on proposed Parcel B makes it impossible to subdivide the Property or adjust the lot lines while complying with the lot width requirement. The Board also finds that the variance for the existing shed is necessary to enable reasonable use of the Property. The shed has been on the Property for approximately 40 years but is located too close to the rear yard property line. The shed cannot remain in its existing location without a variance and the shed is a concrete shed which cannot be moved into compliance.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant only recently acquired the Property and did not create the unique size and shape of the Property nor did the Applicant place the existing dwellings or shed on the Property. The unrebutted evidence confirms that the Property was developed with two houses since at least 1940 and has existed in its current form for many years. Parcel 8.01 was created prior to the Applicant's acquisition of the Property and is a small and undersized lot. No evidence was presented that the lot's size and shape has changed since the implementation of the lot width requirement in the Sussex County Zoning Code. Notably, the Property has three separate entrances and already appears to be subdivided into three lots. The Property, however, is too narrow to meet the lot width requirement and is too small to meet the lot size requirement. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that these unique conditions have created an exceptional practical difficulty for the Applicant.
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board notes that no complaints about the shed's location were noted in the record. The lack of evidence about the location of the shed is telling since the shed has been in its existing location for nearly 40 years. The only opposition to the Application argues that the shed is a "tear-down" but the Applicant convinced the Board that the shed is a solid, concrete structure which is currently being used. There was no evidence demonstrating that the Applicant intends to tear down the shed or that the shed would alter the character of the neighborhood. Rather, the opposition appeared to have the misunderstanding that the rear yard variance request would allow for the construction of a home in the rear yard setback. This belief is simply not true as the variance is only for the existing shed. The Board was otherwise not convinced that shed somehow altered the essential character of the neighborhood or has been detrimental to the public welfare. Likewise, the variances from the lot width and minimum lot size requirements do not appear to affect the character of the neighborhood. The Property will be subdivided into three lots of nearly equal size and shape. The unrebutted evidence confirms that there are other lots in the neighborhood which are less than 150 feet wide including the lot owned by the opposition to the Application. The only opposition to the proposed subdivision expressed concern about the size of the lots and that the Applicant may develop them with newer homes on "townhouse sized lots". The lots proposed by the Applicant are far wider than normal lots for townhouses and the subdivision would result in lots of a similar size to others in the neighborhood. Notably, the lot across the street from the Property is only 95 feet wide as shown on

the Sussex County tax map. Other nearby lots are 75 and 80 feet wide. Furthermore, if the Property were not subdivided, the Applicant could maintain the existing two homes on Parcel 8.00 and build a dwelling on Parcel 8.01; thereby giving the impression that the Property was already subdivided into three lots. The Board was simply not convinced that the proposed subdivision of the Property would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated the variances will allow the Property to be subdivided into three lots. The lots are proposed to be divided in such a way as to minimize the need for the variances on the lots while still providing similar lot width and size for each of the lots. The proposed subdivision also brings Parcel 8.01 more into conformity with the Sussex County Zoning Code. Meanwhile, the variance for the shed is the minimum variance necessary to afford relief as the variance will allow the shed to remain in its present location. No additions to the shed are being proposed.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date May 16, 2017